

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

FOSAMAX PRODUCTS LIABILITY LITIGATION

This Document Relates To:

CARRIE SMITH, et al

PLAINTIFFS,

-vs.-

**MERCK & CO., INC. and MCKESSON
CORPORATION**

DEFENDANT.

1:06-MD-1789 (JFK)

Cause No. 1:07-CV-09564-JFK

NOTICE OF MOTION TO REMAND

Plaintiffs in the above mentioned lawsuit ("The Lawsuit") respectfully request that this Court remand this cause back to the Superior Court of Los Angeles in California State Court. The Lawsuit was initially filed in state court before it was improvidently removed by Merck, one of the Defendants. Defendant's motion for stay pending transfer was granted by the district judge though the Plaintiffs' Motion for Remand, challenging federal jurisdiction, was pending and set for hearing only a week after the stay order. Because the federal courts lack jurisdiction, rendering remand appropriate, this court should vacate the transfer so that the matter may be remanded to the appropriate state court. A supporting memorandum accompanies this motion.

Date October 31, 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Notice of Motion to Remand* was served in accordance with Case Management Order No. 3 and this Court's Procedures for Electronic Case Filing, , this 31st day of October, 2007.

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